

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 34272 & 34472

STATE OF IDAHO,	)	2008 Unpublished Opinion No. 514
	)	
Plaintiff-Respondent,	)	Filed: June 13, 2008
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
JASON PHILLIPS,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fifth Judicial District, State of Idaho, Cassia County. Hon. Monte B. Carlson and Randy J. Stoker, District Judges. Hon. Michael R. Crabtree, Magistrate.

Orders of the district courts, on intermediate appeals from the magistrate divisions, affirming judgments of conviction for exceeding the speed limit, affirmed.

Jason Phillips, Albion, pro se appellant.

Hon. Lawrence G. Wasden, Attorney General; Kenneth K. Jorgensen, Deputy Attorney General, Boise, for respondent.

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PERRY, Judge

In these consolidated cases, Jason Phillips appeals from the intermediate appellate orders of the district courts, affirming two judgments of conviction for exceeding the speed limit. For the reasons set forth below, we affirm.

I.

FACTS AND PROCEDURE

In Docket No. 34272 the state charged Phillips with speeding, pursuant to I.C. § 49-654, for driving 74 mph in a 55 mph zone. The magistrate found Phillips guilty after a court trial. Phillips appealed to the district court, which affirmed.

In Docket No. 34472 the state again charged Phillips with speeding, pursuant to I.C. § 49-654, for driving 74 mph in a 55 mph zone. The magistrate again found Phillips guilty after a court trial. Phillips appealed to the district court, which affirmed and adopted the decision of the district court from Docket No. 34272. Phillips again appeals both cases.

## II. STANDARD OF REVIEW

On review of a decision of the district court, rendered in its appellate capacity, we review the decision of the district court directly. *Losser v. Bradstreet*, \_\_\_ Idaho \_\_\_, 183 P.3d 758, 760 (2008). We review the magistrate’s findings to determine whether they are supported by substantial and competent evidence. *Losser*, \_\_\_ Idaho at \_\_\_, 183 P.3d at 760.

The constitutionality of a statute is a question of law that we review de novo. *State v. Hart*, 135 Idaho 827, 829, 25 P.3d 850, 852 (2001). A party challenging the constitutionality of a statute must overcome a strong presumption of validity. *State v. Cobb*, 132 Idaho 195, 197, 969 P.2d 244, 246 (1998).

## III. ANALYSIS

### A. Constitutionality of Statute

Phillips argues that the Idaho Traffic Infractions Act (ITIA)<sup>1</sup> is an unconstitutional violation of the separation of powers provision of the Idaho Constitution. Phillips also argues that the procedure establishing the ITIA is unconstitutional because it creates an unconstitutional cause of action and that the ITIA is a violation of the ex post facto doctrine.<sup>2</sup> We will address each of Phillips’s constitutional arguments in turn.

Phillips was twice found guilty of infractions for speeding. I.C. § 49-654. The statute governing the procedure for processing infractions provides, in pertinent part:

The procedure for processing an infraction citation and the trial thereon, if any, shall be the same as provided for the processing of misdemeanor citation under rules promulgated by the supreme court, except there shall be no right to a trial by jury.

I.C. § 49-1502(1).

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<sup>1</sup> Both parties refer to the ITIA in their briefs on appeal. The ITIA has been repealed and redesignated in Title 49 of the Idaho Code. Phillips was found guilty of speeding under I.C. § 49-654, which is now referred to as “Rules of the Road.”

<sup>2</sup> The state argues that Phillips’s appeal in Docket No. 34472 is untimely. However, because Phillips asserts identical arguments in both cases and we must review the merits of Phillips’s claims, we decline to conclude that Phillips’s appeal in Docket No. 34472 is untimely.

Phillips argues that the ITIA is unconstitutional as a violation of the separation of powers doctrine because Idaho Supreme Court personnel were involved in the 1982 amendments to the Act. The state counters by asserting that Phillips's argument fails because he failed to cite authority for the propositions necessary for his argument.

In *State v. Bennion*, 112 Idaho 32, 730 P.2d 952 (1986), a motorist was accused of running a red light. The motorist argued that the ITIA, which defines infractions as civil offenses rather than as criminal actions, was unconstitutional because it denied the right to a jury trial. The majority of the Idaho Supreme Court concluded that the ITIA was constitutional. *Bennion*, 112 Idaho at 46, 730 P.2d at 966. However, Justice Bistline wrote a separate opinion, which he described as neither concurring nor dissenting. In Justice Bistline's separate opinion, he described the process behind the drafting of amendments to the ITIA in 1982. Although Justice Bistline expressed some concerns about the ITIA's constitutionality, his major concern was with the appearance of impropriety and he doubted whether the Idaho Supreme Court should have been determining the ITIA's constitutionality because court personnel were involved in helping draft it. *Bennion*, 112 Idaho at 47-48, 730 P.2d at 967-68 (separate opinion of Bistline, J.).

Phillips relies on Justice Bistline's separate opinion and the concerns he expressed about a potential violation of the separation of powers doctrine. However, as the state asserts, Phillips has provided no authority for the following three propositions: (1) involvement of persons employed by the judicial branch in the drafting of legislation violated the separation of powers; (2) if there was a violation of the separation of powers doctrine for the judicial branch's involvement in drafting the ITIA, such a violation would invalidate legislation adopted by the legislature and signed by the governor; and (3) the constitutional infirmity would continue to invalidate the ITIA even after it was adopted again by the legislature through recodification in 1988.

Justice Bistline's separate opinion is not binding precedent upon this Court. Furthermore, Phillips failed to address the legislature's initial enactment of the law, as well as its amendment and recodification in 1988. Finally, Phillips failed to provide any authority--other than Justice Bistline's opinion--that can be construed as indicative that the ITIA violates the separation of powers doctrine. Therefore, we conclude Phillips has failed to overcome the strong presumption

of constitutional validity and his argument that the ITIA is an unconstitutional violation of the separation of powers doctrine fails.

Phillips argues that the ITIA is unconstitutional because the Idaho Constitution does not confer jurisdiction on the magistrate division to hear cases under the ITIA. In addition to arguing a lack of jurisdiction, Phillips appears to argue that the procedure under the ITIA is unconstitutional because it is criminal in nature and there exists no right to trial by jury. The state counters by arguing that Phillips has failed to show that the legislative assignment of ITIA cases to the magistrate division is constitutionally defective.

Article V, Section 2 of the Idaho Constitution provides that “the jurisdiction of [the magistrate division] shall be as prescribed by the legislature.” The legislature has assigned proceedings under the ITIA to the magistrate division. I.C. § 1-2208(5). Therefore, Phillips’s argument that the legislature’s assignment of traffic infraction cases to the magistrate division is unconstitutional is without merit.

The legislature’s assignment of ITIA cases--where the maximum punishment is a fine or suspension of a driver’s license--to the magistrate division does not violate the right to trial by jury provided in Article I, Section 7 of the Idaho Constitution. *Bennion*, 112 Idaho at 46, 730 P.2d at 966. Therefore, Phillips’s argument that the ITIA is unconstitutional because it is criminal in nature and provides no right to trial by jury also fails.

Next, Phillips argues that the ITIA violates the ex post facto doctrine “when tried pursuant to *Article I* § 7 because it allows conviction without evidence and jury trial, and a citizen charged under the ITIA is presumed guilty and required to testify to establish innocence.” The state counters by arguing that Phillips has failed to show that the ex post facto doctrine is implicated in this case.

The ex post facto doctrine prohibits a state from retroactively altering the definition of a crime or increasing the punishment after a defendant has committed the proscribed conduct. *See State v. Lovelace*, 140 Idaho 73, 77, 90 P.3d 298, 302 (2004). Phillips does not allege that the definition of speeding, the fine for speeding, or the rules of evidence related to a speeding infraction were altered after he actually sped. Therefore, Phillips has failed to demonstrate that the prohibition against ex post facto laws was violated in his case.

**B. Attorney Fees**

Phillips argues, as he did before the district courts, that he is entitled to attorney fees on appeal. However, he is not the prevailing party and, as a pro se litigant, has not incurred attorney fees. Therefore, Phillips's request for attorney fees is denied.

**IV.**

**CONCLUSION**

The district courts properly concluded that the ITIA is constitutional. Furthermore, the district courts properly denied Phillips's requests for attorney fees. Therefore, we affirm the orders of the district courts, on intermediate appeals, affirming Phillips's judgments of conviction for speeding.

Chief Judge GUTIERREZ and Judge LANSING, **CONCUR.**